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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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10 UNITED STATES OF AMERICA,)

Case No.: 2:09-cr-00240-RLH-RJJ

11 Plaintiff,)

ORDER

12 vs.)

(Motion for DNA Testing—#95)

13 BRIAN FIERRO,)

14 Defendant.)
15

16 Before the Court is *pro se* Defendant Brian Fierro's **Motion for DNA Testing**
17 (#95, filed June 14, 2012) pursuant to the Innocence Protection Act of 2004, 18 U.S.C. §§ 3600.
18 The Court has also considered the United States of America's Opposition (#97, filed June 29).
19 Fierro did not file a Reply.

20 On November 4, 2009, a jury found Fierro guilty of one count of Interference with
21 Commerce by Robbery, one count of Discharging a Firearm During a Crime of Violence, and two
22 counts of Felon in Possession of a Firearm. The Court later sentence Fierro to prison and entered
23 an order of forfeiture for a Sturm Ruger Model Security Six .357 Magnum revolver (the "Ruger")
24 and its ammunition.

25 Fierro has now filed a motion for DNA testing of the Ruger, which was in the
26 possession of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") while Fierro

1 pursued an appeal of his conviction. However, once the Ninth Circuit Court of Appeals affirmed
2 Fierro's conviction, the ATF destroyed both the Ruger and its ammunition pursuant to Department
3 of Justice policies. Thus, Fierro's request that the Ruger and its ammunition be tested for DNA is
4 moot.

5 Accordingly, and for good cause appearing,

6 IT IS HEREBY ORDERED that Fierro's Motion for DNA Testing (#95) is
7 DENIED as moot.

8 Dated: August 2, 2012

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11 **ROGER L. HUNT**
12 **United States District Judge**
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